

## § 1.182-1

## 26 CFR Ch. I (4-1-01 Edition)

consent of the district director for the district in which the taxpayer's return is required to be filed. Such requests for consent shall be in writing and signed by the taxpayer or his authorized representative and shall set forth:

(1) The name and address of the taxpayer;

(2) The taxable year to which the revocation of the election is to apply;

(3) The amount of expenditures paid or incurred during the taxable year, or portions thereof (where applicable), previously taken as a deduction on the return in respect of which the revocation of the election is to be applicable; and

(4) The reasons for the request to revoke the election.

(74 Stat. 1001, 26 U.S.C. 180)

[T.D. 6548, 26 FR 1486, Feb. 22, 1961]

### § 1.182-1 Expenditures by farmers for clearing land; in general.

Under section 182, a taxpayer engaged in the business of farming may elect, in the manner provided in § 1.182-6, to deduct certain expenditures paid or incurred by him in any taxable year beginning after December 31, 1962, in the clearing of land. The expenditures to which the election applies are all expenditures paid or incurred during the taxable year in clearing land for the purpose of making the "land suitable for use in farming" (as defined in § 1.182-4) which are not otherwise deductible (exclusive of expenditures for or in connection with depreciable items referred to in paragraph (b)(1) of § 1.182-3), but only if such expenditures are made in furtherance of the taxpayer's business of farming. The term *expenditures* to which the election applies also includes a reasonable allowance for depreciation (not otherwise allowable) on equipment used in the clearing of land provided such equipment, if used in the carrying on of a trade or business, would be subject to the allowance for depreciation under section 167. (See paragraph (c) of § 1.182-3.) (See section 175 and the regulations thereunder for deductibility of certain expenditures for treatment or moving of earth by a farmer where the land already qualifies as land used in farming as defined in § 1.175-4.) The

amount deductible for any taxable year is limited to the lesser of \$5,000 or 25 percent of the taxable income derived from farming (as defined in paragraph (a)(2) of § 1.182-5) during the taxable year. Expenditures paid or incurred in a taxable year in excess of the amount deductible under section 182 for such taxable year shall be treated as capital expenditures and shall constitute an adjustment to the basis of the land under section 1016(a).

[T.D. 6794, 30 FR 790, Jan. 26, 1965]

### § 1.182-2 Definition of "the business of farming."

Under section 182, the election to deduct expenditures incurred in the clearing of land is applicable only to a taxpayer who is engaged in "the business of farming" during the taxable year. A taxpayer is engaged in the business of farming if he cultivates, operates, or manages a farm for gain or profit, either as owner or tenant. For purposes of section 182, a taxpayer who receives a rental (either in cash or in kind) which is based upon farm production is engaged in the business of farming. However, a taxpayer who receives a fixed rental (without reference to production) is engaged in the business of farming only if he participates to a material extent in the operation or management of the farm. A taxpayer engaged in forestry or the growing of timber is not thereby engaged in the business of farming. A person cultivating or operating a farm for recreation or pleasure rather than for profit is not engaged in the business of farming. For purposes of section 182 and this section, the term *farm* is used in its ordinary, accepted sense and includes stock, dairy, poultry, fish, fruit, and truck farms, and also plantations, ranches, ranges, and orchards. A fish farm is an area where fish are grown or raised, as opposed to merely caught or harvested; that is, an area where they are artificially fed, protected, cared for, etc. A taxpayer is engaged in "the business of farming" if he is a member of a partnership engaged in the business of farming. See § 1.702-1.

[T.D. 6794, 30 FR 790, Jan. 26, 1965]